

REMARKS

Claims 1-15 and 20-34 are pending in the application.

Claims 1-14, 20-32 and 34 have been rejected.

Claims 15 and 33 are objected to.

New independent Claim 35 has been added.

I. **REJECTIONS UNDER 35 U.S.C. § 103**

Claims 1 and 20 were rejected under 35 U.S.C. § 103(a) as being unpatentable over Constantin (US Patent No. 6,198,725) in view of Daniel (US Patent No. 5,726,985) and newly cited Chuah (US Patent Application Publication No. 2003/0214928).

Claim 2 was rejected under 35 U.S.C. § 103(a) as being unpatentable over Constantin (US Patent No. 6,198,725) in view of Daniel (US Patent No. 5,726,985) and) and newly cited Chuah (US Patent Application Publication No. 2003/0214928) and Thorson (US Patent No. 4,440,986).

Claims 3, 6-8, 21 and 24-26 were rejected under 35 U.S.C. § 103(a) as being unpatentable over Constantin (US Patent No. 6,198,725) in view of Daniel (US Patent No. 5,726,985) and newly cited Chuah (US Patent Application Publication No. 2003/0214928), and further in view of Yamato (US Patent No. 5,694,390).

Claims 4-5 and 22-23 were rejected under 35 U.S.C. § 103(a) as being unpatentable over Constantin (US Patent No. 6,198,725) in view of Daniel (US Patent No. 5,726,985) and newly cited Chuah (US Patent Application Publication No. 2003/0214928), and further in view of Campbell (US Patent Application Publication 2003/0140159).

Claim 34 was rejected under 35 U.S.C. § 103(a) as being unpatentable over Constantin (US Patent No. 6,198,725) in view of Daniel (US Patent No. 5,726,985) and newly cited Chuah (US Patent Application Publication No. 2003/0214928) and Thorson (US Patent No. 4,440,986), and further in view of Campbell (US Patent Application Publication 2003/0140159).

Claims 9-13 and 27-31 were rejected under 35 U.S.C. § 103(a) as being unpatentable over Constantin (US Patent No. 6,198,725) in view of Daniel (US Patent No. 5,726,985) and newly cited

Chuah (US Patent Application Publication No. 2003/0214928) and Yamato (US Patent No. 5,694,390) and further in view of Geagan III (US Patent No. 6,263,371).

Claims 14 and 32 were rejected under 35 U.S.C. § 103(a) as being unpatentable over Constantin (US Patent No. 6,198,725) in view of Daniel (US Patent No. 5,726,985) and newly cited Chuah (US Patent Application Publication No. 2003/0214928) and Yamato (US Patent No. 5,694,390) and Geagan III (US Patent No. 6,263,371) and further in view of Thorson (US Patent No. 4,440,986).

The rejections are respectfully traversed.

In *ex parte* examination of patent applications, the Patent Office bears the burden of establishing a *prima facie* case of obviousness. MPEP § 2142; *In re Fritch*, 972 F.2d 1260, 1262, 23 U.S.P.Q.2d 1780, 1783 (Fed. Cir. 1992). The initial burden of establishing a *prima facie* basis to deny patentability to a claimed invention is always upon the Patent Office. MPEP § 2142; *In re Oetiker*, 977 F.2d 1443, 1445, 24 U.S.P.Q.2d 1443, 1444 (Fed. Cir. 1992); *In re Piasecki*, 745 F.2d 1468, 1472, 223 U.S.P.Q. 785, 788 (Fed. Cir. 1984). Only when a *prima facie* case of obviousness is established does the burden shift to the applicant to produce evidence of nonobviousness. MPEP § 2142; *In re Oetiker*, 977 F.2d 1443, 1445, 24 U.S.P.Q.2d 1443, 1444 (Fed. Cir. 1992); *In re Rijckaert*, 9 F.3d 1531, 1532, 28 U.S.P.Q.2d 1955, 1956 (Fed. Cir. 1993). If the Patent Office does not produce a *prima facie* case of unpatentability, then without more the applicant is entitled to grant of a patent. *In re Oetiker*, 977 F.2d 1443, 1445, 24 U.S.P.Q.2d 1443, 1444 (Fed. Cir. 1992); *In re Grabiak*, 769 F.2d 729, 733, 226 U.S.P.Q. 870, 873 (Fed. Cir. 1985).

A *prima facie* case of obviousness is established when the teachings of the prior art itself suggest the claimed subject matter to a person of ordinary skill in the art. *In re Bell*, 991 F.2d 781, 783, 26 U.S.P.Q.2d 1529, 1531 (Fed. Cir. 1993). To establish a *prima facie* case of obviousness, three basic criteria must be met. First, there must be some suggestion or motivation, either in the references themselves or in the knowledge generally available to one of ordinary skill in the art, to modify the reference or to combine reference teachings. Second, there must be a reasonable expectation of success. Finally, the prior art reference (or references when combined) must teach

or suggest all the claim limitations. The teaching or suggestion to make the claimed invention and the reasonable expectation of success must both be found in the prior art, and not based on applicant's disclosure. MPEP § 2142. In making a rejection, the examiner is expected to make the factual determinations set forth in *Graham v. John Deere Co.*, 383 U.S. 1, 17, 148 USPQ 459, 467 (1966), viz., (1) the scope and content of the prior art; (2) the differences between the prior art and the claims at issue; and (3) the level of ordinary skill in the art. In addition to these factual determinations, the examiner must also provide “some articulated reasoning with some rational underpinning to support the legal conclusion of obviousness.” (*In re Kahn*, 441 F.3d 977, 988, 78 USPQ2d 1329, 1336 (Fed. Cir 2006) (cited with approval in *KSR Int’l v. Teleflex Inc.*, 127 S. Ct. 1727, 1741, 82 USPQ2d 1385, 1396 (2007))).

The Office Action concedes that neither Constantin or Daniel teach “at least a one of reconfiguring a switching matrix in the network and reducing the number of channels in the network.” See, Office Action, page 3. The Office Action then asserts that Chuah broadly teaches reducing the number of channels in the network. Paragraph 0234 of Chuah teaches that when a specific connection is experiencing a high frame error rate, “an access point may disconnect other users in order to give more bandwidth to the higher priority connection.” Chuah, paragraph [0234]. Chuah also teaches that when frame error rates of many connections are increasing, then the access point may disconnect a class of users who permit service interruption so that “more bandwidth” may be allocated to the remaining users” Chuah, paragraph [0233].

Applicant notes that Chuah (“Method For Paging A Device In A Wireless Network) is directed to a method of access control (access points) in wireless network having a base station and wireless remote hosts. Chuah, Abstract. In distinct contrast, the Applicant’s disclosure is directed to the transmission of voice packets within a private branch exchange (PBX). Applicant respectfully submits that (1) Chuah is non-analogous art, (2) a person of ordinary skill in the art would not resort to wireless networks having base stations and wireless remote devices to solve QOS issues in a PBX network transmitting voice packets, and/or (3) because Constantin only appears to address allowing or disallowing a new connection based on delay budgets between network elements along a potential

path – and does not address QOS issues once the connection is made. Based on these, there exists no teaching, suggestion or rational basis to combine Chuah with Constantin.

Constantin allocates resources along a path through a network in response to a connection request message. Constantin, Abstract. In general terms, using cell delay calculations, if each successive resource element in the prospective path meets the delay budget, that resource element and path are utilized for the connection; if not, other paths are explored. See Constantin, generally. Thus, Constantin teaches, generally, determining and finding a path through a plurality of resource elements that meets the required delay budget. Constantin simply allocates the resource elements in order to stay within the delay budget. Col. 7, lines 1-3. If the delay budget cannot be met, the connection request is not forwarded -- no connection is made. Constantin does not allow a connection to proceed when the delay budget is not met. And when the delay budget is met, the connection is made, and that is where the disclosure of Constantin ends.

It would appear that the combination of Constantin and Chuah might result in Constantin continually monitoring network performance, and then adjusting higher the delay budgets of each path, as appropriate, when there are performance issues. Constantin then would focus on new connection requests - not bandwidth optimization - and would simply either make or not make a new connection. There would be no reduction in the number of channels (see Applicant's prior response regarding Constantin) and no reconfiguration of a switching matrix - as claimed.

Based on the foregoing, Applicant submits that independent Claims 1 and 20 (and Claim 2) are not obvious in view of Constantin and Chuah. Similarly, the other cited references, do not appear to cure these noted deficiencies, and therefore, all pending claims are patentable. Therefore, the Applicant respectfully requests withdrawal of all of the § 103 rejections of independent Claims 1, 2 and 20 (and their dependent Claims 3-15 and 21-33).

II. NEW CLAIM 35

New independent Claim 35 has been added. Claim 35 is similar to independent Claim 1 except that the limitation of "reducing the number of channels in the network" has been deleted. Thus, Claim 35 recites that "enabling bandwidth optimization includes reconfiguring a switching matrix within the network." It does not appear that Chuah discloses this element/feature. Therefore, Applicant submits that this claim is allowable over the cited art.

III. CONCLUSION

As a result of the foregoing, the Applicant asserts that the remaining Claims in the Application are in condition for allowance, and respectfully requests an early allowance of such Claims.

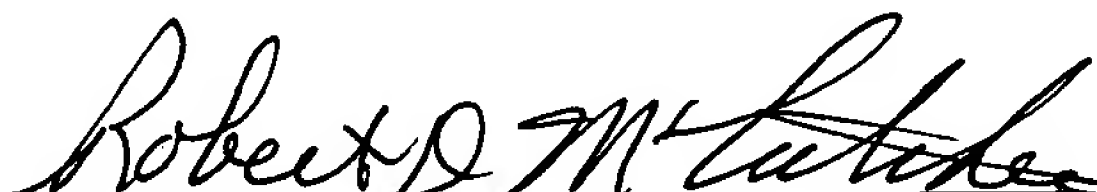
If any issues arise, or if the Examiner has any suggestions for expediting allowance of this Application, the Applicant respectfully invites the Examiner to contact the undersigned at the telephone number indicated below or at *rmccutcheon@munckcarter.com*.

The Commissioner is hereby authorized to charge any additional fees connected with this communication or credit any overpayment to Munck Carter Deposit Account No. 50-0208.

Respectfully submitted,

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